



Los Angeles County
Department of Regional Planning



Planning for the Challenges Ahead

DATE: January 13, 2003

James E. Hartl, AICP
Director of Planning

TO: Supervisor Yvonne Brathwaite Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

FROM: James E. Hartl, AICP, Director
Department of Regional Planning

SUBJECT: Board Motion by Supervisor Michael D. Antonovich
Regarding the Environmental Document Preparation for the
Newhall Ranch Specific Plan

On January 7, 2003, the Board directed the Department of Regional Planning (DRP) to conduct a thorough investigation regarding the preparation of the biota report for the Newhall Ranch project including a detailed chronology of events regarding the San Fernando Valley (SFV) spineflower (*Chorizanthe parryi* var. *fernandina*) and conduct a survey of other California planning agencies to determine what procedures are employed elsewhere to ensure compliance with the environmental reporting requirements of CEQA. The following are results of our investigation.

1. Chronology of SFV Spineflower related events for Newhall Ranch Specific Plan

The details of the County record on the spineflower in relation to the Newhall Ranch Specific Plan are contained in the Revised Draft Additional Analysis (RDAA) released November 27, 2002. A summary of that chronology is attached to this report. Our review of the record in relation to the SFV spineflower indicates that the endangered species was discovered on the Newhall Ranch property after the County originally certified the EIR for the Specific Plan in 1999. Newhall Ranch staff notified the DRP shortly after its confirmation as being present in 2000 as was disclosed in the Draft Additional Analysis (DAA) in April 2001. It is the opinion of staff that the Newhall Ranch Company did not withhold information relating specifically to the discovery and location of spineflower populations from the County.

The activities on Newhall Ranch (i.e., agricultural practices) that arouse the concern of the California Department of Fish & Game in regard to the SFV spineflower are land uses for which the property is zoned and from which no discretionary approval or permit is needed from the DRP. Consequently, there is no requirement for Newhall Ranch to apprise DRP of all land use activities that are authorized within that zone designation. The State Fish & Code code(s) protecting native plants and endangered species do apply to the private property activities on Newhall Ranch and compliance with these State statutes is the obligation of the property owner.

II. Los Angeles County

Environmental Document Preparation and Contracting Arrangement

The Los Angeles County Department of Regional Planning (DRP) currently relies on consultants who contract directly with a project proponent to prepare EIRs with County staff providing independent review of all EIRs to ensure that CEQA requirements are met. This process has been in place for more than a decade with the preparation of more than 100 EIRs in that time. The process has been unsuccessfully challenged in State court and the CEQA regulations changes are consistent with this process.

2. Staffing

The DRP CEQA compliance staff's (five planners and two biologists) primary responsibility is to review EIRs and to directly and independently prepare other environmental documents such as Mitigated Negative Declaration, Negative Declaration, and Categorical Exemption. There is currently two staff planners (one being the senior biologist) assigned to review EIRs and four planners responsible for completing CEQA Initial Studies.

III. Contracting Arrangements of Planning Agencies within California

The Governor's Office of Planning and Research (OPR) conducted surveys in 1997 and 1999 involving the state's planning agencies. According to the survey results, three different contracting arrangements in preparing EIR are utilized: the project proponent contracts directly with an EIR consultant; the lead agency contracts with the EIR consultant with the developer being involved in the selection process; and the lead agency contracts alone with the EIR consultant. A variation of these options is where a local jurisdiction (e.g., the City of Santa Monica) maintains a list of approved consultants from which a project proponent selects to contract for environmental services. Another adaptation is where a three-way contract is entered into between the applicant, the environmental consultant and the lead agency (e.g., Orange County).

Generally, the larger a jurisdiction is, the more likely the agency is to allow the developer to select the EIR consultant. Some of these agencies include the Counties of Los Angeles and San Diego, and the City of Los Angeles. The primary responsibility of staff within these jurisdictions is to provide independent review of the environmental documents.

It should be noted that the number of jurisdictions allowing a project proponent to contract directly with the environmental consultant increased in the 1999 survey from those reported in 1997.

The OPR surveys also indicate that lead jurisdictions that are of moderate and small size allow developers to participate in the contracting process with the local agency, or they retain the EIR consultants without any developer involvement. Some of these jurisdictions include the Counties of Ventura, Marin, and Santa Clara.

The OPR surveys of the state's planning agencies were intended to determine the number of public agencies that permitted developers to retain the EIR consultants. In 1997, OPR determined that 466 public agencies relied on consultants to prepare EIRs. Of those agencies responding, 13 percent allowed the developer to select the EIR consultant; 51 percent involved the developer with the agency in the selection process; and 36 percent made the selection without developer participation. The similar 1999 OPR survey of jurisdictions, three times as many as in 1997 allowed the developer to hire the EIR consultant (286 percent increase).

IV. Examples from Neighboring Jurisdictions

ORANGE COUNTY

1. Environmental Document Preparation and Contracting Arrangement

Three-party (the county, the consultant, and the developer) contracts are enacted when an EIR is to be prepared for a project. Generally, the developer establishes a deposit account with the County and the consultant is paid through this county account. The consultant is selected through the Request for Proposal (RFP) process. Notice will be sent to all consultants on the County's general list.

2. Staffing

Staff assigned to the Environmental & Project Planning Services Division (EPPSD) of the County of Orange PDSD includes those whose primary responsibility is the implementation of CEQA. The Division is the County's center for CEQA compliance and environmental documentation. Currently, there are three (3) planners assigned to handle environmental review and environmental document preparation for private projects. These three planners review an average of two to three EIRs each year.

CITY OF LOS ANGELES

1. Environmental Document Preparation and Contracting Arrangement

The City of Los Angeles Department of City Planning (DCP) relies on consultants who contract directly with project proponent to prepare EIRs with City staff providing independent review of all environmental documents. This is similar to the process in Los Angeles County.

2. Staffing

The DCP currently has five planners whose primary responsibility is to review and prepare environmental documents: two planners review EIRs and three planners are responsible for other environmental documents such as Mitigated Negative Declaration, Negative Declaration, and Categorical Exemption. It should be noted that the Planning Department reviews projects outside of the jurisdiction of the City Redevelopment Agency. There are approximately 15 pending EIR projects in various stages of review.

V. Confidentiality Agreements

Confidentiality agreements are a common business practice primarily intended to prevent business competitors from gaining a strategic advantage. The process of land use entitlement is also a business transaction in many respects and therefore confidentiality agreements become part of that process. A land developer, in anticipation of obtaining land use entitlement, may hire a consultant to prepare a variety of technical studies long before applying to a local jurisdiction for a discretionary permit approval.

Confidentiality agreements are increasingly becoming more of a routine practice with both public and private clients (i.e., developers) according to several environmental consultants we have contacted. In our survey, these agreements comprise approximately 5-10% of a consultant contracts. These agreements are almost entirely requested by the land developer. However, the CEQA mandates public involvement and full disclosure of project information and impacts analysis. As such, confidentiality agreements cannot prevent compliance with State law requires full disclosure of all pertinent information to the public and decision-makers prior to discretionary actions being taken.

The City of Los Angeles relies on project proponents to directly contract with the EIR consultant and the City operates under the assumption that the consultant conveys all pertinent information to it. The City Planning Department has not experienced deliberate withholding of information in the preparation of EIRs from any consultant. The City has communicated to us that they have not had concern over the issue of confidentiality agreements.

The County of Orange utilizes a three-way contract when an EIR is to be prepared for a project. Under such an arrangement, the EIR consultant works for the County in addition to the project proponent and the environmental information gets delivered directly to the County where it becomes part of the public record for that project.

It is staff's experience that the occasional involvement of confidentiality agreements with any specific project, including the Newhall Ranch Specific Plan, has not hindered its effects in complying with the provisions of CEQA. It should also be noted that Los Angeles County has included the signing of a confidentiality agreement in some contracts involving consultants, a business practice that is not infrequently encountered.

VI. Staff Recommendation

The current County EIR process is working. Nevertheless, current County environmental procedures may be improved to reflect changes in State laws including CEQA and environmental analysis methodology.

1. Update and Adopt a revised CEQA Procedures Manual

Local CEQA guidelines govern local environmental procedures including EIR preparation. However, the effective "County of Los Angeles Environmental Document Reporting Procedures and Guidelines" was last fully adopted by the Board of Supervisors a number of years ago. There have been considerable changes in State law and in environmental analysis methodology since that time. The DRP has kept pace with these changes through periodic adjustments to the environmental review process as mandated by CEQA amendments.

In addition, the current Guidelines do not include any provisions for environmental contracting arrangements or procedures for the roles of the Los Angeles County, the developer, and the consultant(s) in EIR preparation process. Thus, any revised guidelines should address contractor employee acknowledgement and the use of confidentiality agreement during the EIR preparation. The Guidelines should also be reviewed periodically and reflect County policy changes when necessary. The DRP will endeavor, as staffing and funding permit, to update the Guidelines with regular periodic reviews to reflect any State or County policy or legal changes

2. Consultant to complete EIR and Initial Study Preparation Manual

Currently, Los Angeles County does not have a formal EIR preparation manual available for an environmental consultant in the event of an EIR is to be prepared. The EIR preparation manual would indicate the minimum requirements of an EIR contents. This manual could improve the quality of screencheck EIR submittals and may reduce staff time necessary for review.

In addition, the manual could also mandate a reporting mechanism during EIR preparation stages to ensure compliance with the California Environmental Quality Act (CEQA) and appropriate public disclosure.

The preparation of such a manual will be included as an unmet need in the DRP 2003-2004 budget request.

3. Staffing

It is staff's opinion that the DRP is in compliance with the CEQA requirements. The current staffing level is appropriate for the current caseload within this section under the existing County policies and procedures.

In the event that the County were to change the present policy on contracting arrangement in the preparation of EIRs, additional staff will be necessary to monitor contracts in addition to reviewing the preparation of environmental documents. It is estimated that two additional planners would be needed for EIR reviews and two to three administrative staff required to properly to solicit and monitor contracts with environmental consultants. However, this change in procedure is not being recommended by the DRP.

If you have any questions regarding the information contained within this report, please feel free to contact either Daryl Koutnik or my staff at (213) 974-6461 or myself.

cc: Executive Office
County Counsel
Chief Administrative Office

Chronology of San Fernando Valley spineflower-related events, 1995 present:

1. 1995 – 1996: San Fernando Valley spineflower (SFV) is not observed for Newhall Ranch Specific Plan (NRSP) onsite biological surveys. The Draft Environmental Impact Report concludes that SFV has a low potential to occur on the site because it has not been found and because it is presumed to be extinct.
2. 1999: SFV is found on the Ahmanson Ranch site in Ventura County (first record 1937). The proposed development would result in the direct loss of SFV and SFV habitat. These impacts are proposed to be mitigated to below levels of significance with the adoption of a recommended habitat management mitigation program.
3. March 1999: The Revised Draft EIR for the Newhall Ranch Specific Plan and Water Reclamation Plant (WRP) describes the sensitive biological resources present or likely to be present on the Newhall Ranch Specific Plan site. SFV is not mentioned among the resources described.
4. March 23, 1999: The Los Angeles County Board of Supervisors certifies the Final EIR and approves the Newhall Ranch Specific Plan and WRP. After County certification of the Final EIR and project approvals, the applicant begins the initial tentative map process and coordinates preparation of the Natural River Management Plan with the California Department of Fish and Game (CDFG) and other agencies to address project-specific activities requiring federal and state permitting.
5. April 1999: Project opponents file a lawsuit challenging the adequacy of the Final EIR.
6. Spring 2000: The applicant hires URS Corporation (URS) to conduct rare plant surveys to support the Natural River Management Plan and future tentative map submittals.
7. Late April 2000: URS begins conducting sensitive plant surveys and finds SFV south of Magic Mountain Theme Park.
8. May 2000: URS botanists identify the presence of presumed SFV a half mile south of the Santa Clara River near Grapevine Mesa. Impact Sciences, Inc. submits the specimen to the University of California, Berkeley. UC Berkeley verifies the specimen as SFV. The applicant notifies CDFG and other agencies, including Los Angeles County, of the presence of SFV at Grapevine Mesa and erects posts to protect the plant. URS botanists continue surveys through the end of May 2000.
9. May 31, 2000: The Court issues a ruling to uphold the EIR and project approval in most respects. The Court orders the County to provide additional environmental analysis for six issues: (1) traffic impacts to Ventura County, (2) biological impacts to the Salt Creek Corridor, (3) biological impacts to the Santa Clara River, (4) adequacy of water sources, (5) alternative siting of the WRP and (6) an assurance that the

NRSP is in keeping with the County General Plan policies for Significant Ecological Area No. 23. SFV is not mentioned in the Court decision. The applicant suspends plant surveys and other project-specific planning activities and focuses on steps to comply with the Court decision. The applicant advises CDFG and other agencies of its decision to withdraw from implementation of the Natural River Management Plan until the Court-specified issues are addressed in an additional environmental analysis.

10. August 2000: The Court issues a final Statement of Decision, Writ of Mandate and Judgment. It determines the majority of the County's environmental determinations to have been lawfully made. It orders the Board of Supervisors to partially set aside project approvals and to partially decertify the Final EIR. Project-specific analysis is initiated for WRP alternatives. SFV and other sensitive species are determined not to be present on the WRP site.
11. 2001: Portions of Airport Mesa are leased to an existing tenant/farmer.
12. April 2001: The Newhall Ranch Draft Additional Analysis (DAA) is prepared to address specific issues raised in the Court's tentative ruling. The Grapevine Mesa population of SFV is mentioned in the WRP alternatives section. After public circulation, DAA responses to comments are prepared (September 2001). The responses note the CDFG Commission determination (August 23, 2001) to list the SFV as a state endangered species.
13. May 2001: The applicant reinitiates sensitive plant surveys to support the processing of future tentative map submittals.
14. June 2001: The applicant hires FLx to survey the Valencia Commerce Center site for sensitive biological resources. SFV is observed there. FLx completes sensitive species surveys of River Village, Long Canyon, San Martinez Canyon and Salt Canyon. SFV is observed at San Martinez Canyon.
15. November 13, 2001: The CDFG Commission finalizes and publishes a proposed rule change to list the SFV under the California Endangered Species Act, effective September 8, 2002.
16. Early May 2002: The applicant contracts with FLx to conduct sensitive plant surveys on Airport Mesa. FLx observes SFV, identifies survey locations and provides population size estimates.
17. May 2002: The applicant hires Dudek & Associates (DUDEK) to survey Mesas Village.
18. Late May 2002: CDFG obtains a warrant and conducts SFV surveys over approximately 800 acres in agricultural activity areas on Newhall Ranch. SFV occurrence is confirmed on Grapevine Mesa and Airport Mesa. DUDEK surveys are postponed during the CDFG surveys. The applicant requests that DUDEK survey and flag those areas surveyed by CDFG.

The County directs the applicant to have DUDEK expand its surveys to cover all developable areas within the NRSP area.

19. May – September 2002: The DUDEK surveys are conducted. SFV occurrences are confirmed at Grapevine Mesa, Airport Mesa and San Martinez Canyon.
20. November 2002: The applicant requests that URS prepare a memorandum documenting the 2000 field surveys. URS supplies maps of spring 2000 sensitive plant occurrences. The Revised DAA is publicly circulated and contains details of SFV on the Newhall Ranch site, including reports by FLx, DUDEK and URS.